

SENATE BILL NO. 251

INTRODUCED BY V. COCCHIARELLA

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR COVERAGE FOR OCCUPATIONAL DEAFNESS UNDER THE OCCUPATIONAL DISEASE ACT OF MONTANA; AMENDING SECTION 39-72-102, MCA; REPEALING SECTIONS 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, AND 39-71-813, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Occupational deafness distinguished from traumatic loss of hearing.

Occupational deafness, as provided in [sections 1 through 7], is distinguished from traumatic loss of hearing, which may be compensated under Title 39, chapter 71, parts 7 and 10.

NEW SECTION. Section 2. Compensable loss of hearing confined to certain frequencies. Losses

of hearing because of industrial noise for compensation purposes are confined to the frequencies of 500, 1,000, and 2,000 cycles a second. Loss of hearing ability for frequency tones above 2,000 cycles a second is not to be considered as constituting disability for hearing.

NEW SECTION. Section 3. Determining percent of hearing loss. (1) The percent of hearing loss,

for purposes of the determination of compensation claims for occupational deafness, must be calculated as the average in decibels of the thresholds of hearing for the frequencies of 500, 1,000, and 2,000 cycles a second. Pure tone air conduction audiometric instruments, approved by nationally recognized authorities in this field, must be used for measuring hearing loss. Losses of hearing that average 25 decibels or less in the three frequencies, as measured under ISO Standard 1964, are not a compensable hearing disability. Losses of hearing that average 92 decibels or more in the three frequencies, as measured under ISO Standard 1964, constitute a total or 100% compensable hearing loss.

(2) In measuring hearing impairment, the lowest measured losses in each of the three frequencies must be added together and divided by three to determine the average decibel loss. For every decibel of

1 loss exceeding 25 decibels, an allowance of 1 1/2% must be made up to the maximum of 100%, which
2 is reached at 92 decibels.

3 (3) In determining the binaural percentage of loss, the percentage of impairment in the better ear
4 must be multiplied by five. The resulting figure must be added to the percentage of impairment in the
5 poorer ear and the sum of the two divided by six. The final percentage must be representative of the
6 binaural hearing impairment.

7 (4) Before determining the percentage of hearing impairment, in order to allow for the average
8 amount of hearing loss from nonoccupational causes found in the population at any given age, one-half
9 decibel for each year of the employee's age over 40 at the time of last exposure to industrial noise must
10 be deducted from the total average decibel loss.

11 (5) Consideration may not be given to the question of whether or not the ability of an employee
12 to understand speech is improved by the use of a hearing aid.

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14 **NEW SECTION. Section 4. Compensation for wage loss when employee transferring because of**
15 **occupational deafness.** An employee who because of occupational deafness is transferred by the
16 employee's employer to other employment and sustains actual wage loss must be compensated at the rate
17 provided in 39-71-703, not exceeding \$3,500 in the aggregate from all employers. The time of injury is
18 the date of wage loss under this section.

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20 **NEW SECTION. Section 5. Compensation for occupational deafness.** (1) Subject to the limitations
21 in this section, an employee must be paid:

22 (a) for total occupational deafness of one ear, 40 weeks of compensation;

23 (b) for total occupational deafness of both ears, 200 weeks of compensation; and

24 (c) for partial occupational deafness, compensation according to the maximum disabilities provided
25 for in this section.

26 (2) In cases covered by this section, the time of injury is the date of occurrence of any of the
27 following events to an employee:

28 (a) transfer because of occupational deafness to nonnoisy employment by an employer whose
29 employment has caused occupational deafness;

30 (b) retirement;

(c) termination of the employer-employee relationship; or

(d) layoff, provided the layoff is complete and continuous for 1 year.

NEW SECTION. Section 6. Liability of employer for occupational deafness. (1) Except as provided in subsection (2), an employer is liable for the entire occupational deafness to which the employer's employment has contributed.

(2) If previous deafness is established by a hearing test or other competent evidence, whether or not the employee was exposed to noise within the 6 months preceding the test, the employer is not liable for established previous loss or for any loss for which compensation has previously been paid or awarded.

NEW SECTION. Section 7. Employee to have worked ninety days for employer from whom compensation claimed -- minimum exposure and noise intensity level required. (1) A payment may not be made to an employee under [sections 1 through 7] unless the employee has worked in noisy employment for a total period of at least 90 days for the employer from whom the employee claims compensation.

(2) A claim may not be filed unless the employee is exposed 8 hours daily and for a period of at least 90 days to noise intensity levels above 90 decibels.

Section 8. Section 39-72-102, MCA, is amended to read:

"39-72-102. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 39-71-116.

(2) "Child" is as defined in 39-71-116.

(3) "Department" means the department of labor and industry.

(4) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing work in the worker's job pool. Silicosis, when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but ~~they~~ the terms have no reference to "permanent partial disability".

(5) "Employee" is as defined in 39-71-118.

(6) "Employer" is as defined in 39-71-117.

(7) "Independent contractor" is as defined in 39-71-120.

(8) "Insurer" is as defined in 39-71-116.

(9) "Invalid" is as defined in 39-71-116.

(10) "Occupational deafness" means permanent partial or permanent total loss of hearing of one or both ears because of prolonged exposure to noise in employment.

~~(10)~~(11) (a) "Occupational disease" means harm, damage, or death as set forth in 39-71-119(1) arising out of or contracted in the course and scope of employment and caused by events occurring on more than a single day or work shift.

(b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.

~~(11)~~(12) "Order" is as defined in 39-71-116.

~~(12)~~(13) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of ~~such~~ the employment.

~~(13)~~(14) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO₂) and characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs, causing the characteristic x-ray pattern, and by other variable clinical manifestations.

~~(14)~~(15) "Wages" is as defined in 39-71-123.

~~(15)~~(16) "Year" is as defined in 39-71-116."

NEW SECTION. **Section 9. Repealer.** Sections 39-71-801, 39-71-802, 39-71-803, 39-71-804, 39-71-805, 39-71-806, 39-71-807, 39-71-808, 39-71-809, 39-71-810, 39-71-811, 39-71-812, and 39-71-813, MCA, are repealed.

NEW SECTION. **Section 10. Codification instruction.** [Sections 1 through 7] are intended to be codified as an integral part of Title 39, chapter 72, and the provisions of Title 39, chapter 72, apply to [sections 1 through 7].

1 NEW SECTION. **Section 11. Effective date -- applicability.** [This act] is effective July 1, 2001,
2 and applies to claims for benefits filed on or after July 1, 2001.

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